in his particular case, it is intolerable that he should be forced to go without it. In England they manage things better, on the whole, by making the unsuccessful party pay in general all the expenses of the litigation. The frequent hardships caused by the strict application of this rule, which punishes the unsuccessful party for his mistake in bringing or resisting the claim, with a severity usually in direct proportion to the doubtfulness of the matter in dispute, are well pointed out in an article in the Law Quarterly Review for October. The impracticability of a thorough application of the principle, and its real lack of fairness in many cases, causes it to be much relaxed in the actual practice of the English courts. But such a relaxation, except in cases where the successful party is morally at fault, is merely a return to the more primitive form of injustice. The only apparently effective way of removing the evils of present systems of imposing costs is to have the State pay them, and distribute justice gratuitously. However revolutionary such a step may seem, however great the practical difficulties of the change, it may be doubted whether the new evils that would arise would be as great as those we now endure. The people would have to pay heavier taxes; but it would be for a purpose at least as beneficial as many of those for which government funds are at present used; and as for the supposed increase of litigation that would be brought about by the cheapness of justice, there are, as the writer of the above article points out, two sides to the question. The man who brings suits knowing them to be unfounded can be restrained in more direct ways than by the fear of costs; while he who threatens to bring unjust suits, or refuses just demands, in a frequently well-founded reliance on his victim's reluctance to becoming involved in the risk and expense of a lawsuit, would have no chance under the new system.

FORMER ACQUITTAL UNDER A DEFECTIVE INDICTMENT. — The rule of English criminal law, that a prisoner who has been acquitted after trial on an insufficient indictment may be indicted again for the same offence, has hitherto been followed wherever the question has arisen. If there were any cases to the contrary, it may be assumed that they would be noticed in the learned opinion in the case of *Ball* v. *U. S.*, 163 U. S. 662, which decides that a general verdict of acquittal is a bar to a second indictment, though the first indictment was defective. The usually accepted doctrine is founded on *Vaux's Case*, 4 Coke, 44, a most venerable authority. Both Lord Coke and Lord Hale, however, considered that *Vaux's Case* was to be supported only on the ground that the judgment, which was after a special verdict, was in such a form as to leave it doubtful whether the acquittal was on the merits or for the fault in the indictment, and the presumption must be that it was for the latter cause. (See 3 Inst. 214; 2 Hale P. C. 248, 394.) Apart from the actual probability that the judgment in that case was really given upon the merits (see 1 Starkie Cr. Pl., 2d ed., 320), it seems unjust to give the benefit of the doubt to the prosecution; Lord Hale says, "The judgment in *Vaux's Case* was one of the hardest I ever met with in criminal causes." (2 P. C. 394.) In the common practice, both of that day and this, if a judgment or verdict of acquittal is for defect in the indictment that fact will appear on the face of the record.

With whatever degree of reason the rule as to acquittals on insufficient indictments may have been founded on *Vaux's Case*, it is now

widely accepted; and it is held not to conflict with the general principle made binding on our Federal Courts by the Constitution, that no man shall be twice put in jeopardy for the same offence. The contention is that the prisoner cannot be said to have ever been in jeopardy during his trial on an imperfect indictment, because there is always a presumption that the court will set aside the proceedings before judgment. Such a presumption, however, is not founded in fact; for the courts do not of their own motion scrutinize every indictment on which there has been a verdict of guilty, and refuse judgment for any formal defect. If the accused is to take advantage of these flaws, his counsel must point them out. As a matter of fact, very many prisoners have suffered punishment after conviction on indictments in which sufficiently acute counsel might have made the court recognize more than one technical flaw. The usual rule permits the prosecutor to put the accused so far in jeopardy that, if the jury goes against him, he is practically certain to be punished, unless he has exceptionally sharp-witted counsel, and then, after the jury has acquitted him on the merits, to come forward, and, by taking advantage of a flaw in the indictment that he has himself framed, subject the accused to a second trial. In this country, at any rate, a verdict of acquittal on a perfect indictment is held to be in itself a bar to subsequent prosecutions. If then the jeopardy of the prisoner is in fact equally great in most cases where the indictment is insufficient, the verdict ought to be equally a bar to another trial. And certainly it will encourage the careful conduct of the government's case, and lessen needless harassing of prisoners, if prosecutors are prevented from taking advantage of their own mistakes to begin proceedings all over again.

WHERE CAN INTANGIBLE PROPERTY BE TAXED? — There is much confusion in the authorities as to the extent of legislative power to tax intangible property where the State has not jurisdiction of the owner. This may be attributed in part to a frequent misuse of the fiction, *Mobilia personam sequuntur, immobilia situm.* Because of the number of States now taxing inheritances, three recent decisions of the New York Court of Appeals are important. It was held, that the legislature has power to impose such a tax on the stock of a domestic corporation owned by a non-resident decedent and bequeathed to a non-resident, the certificates being kept out of the State, but not on bonds of a domestic corporation similarly owned, etc. (*In re Bronson*, 44 N. E. Rep. 707); that the bonds of a foreign corporation owned and bequeathed in like manner can be similarly taxed when they are actually deposited within the State (*In re Whiting's Estate*, Ibid. 715); and that a non-resident decedent's deposit in a New York trust company is also subject to such taxation. (*In re Houdayer's Estate*, Ibid. 718.)

These cases are of general interest, more because of the instructive opinions delivered by Gray and Vann, JJ., than for the actual results under the New York statute. In their opinions in each of the cases these judges, who concur only in holding the stock in the *Bronson* case taxable, approach the subject from entirely different points of view. The position maintained by Gray, J., that intangible property "can have no locality separate" from its owner, is vigorously assailed by Vann, J.

The fiction *Mobilia personam sequuntur* is really an expression of a rule of law as to the administration of deceased person's estates. Story,